

Planning Board Minutes Site Walk 12/12/08

NEWMARKET PLANNING BOARD SITE WALK

Saturday, December 12, 2008

9:30 a. m.

A site walk was held by the Planning Board regarding the application of Walter W. Cheney for a subdivision of a 71.65 acre tract of property along Lubberland Creek at Moody Point.

The following individuals were present: George Willant, Janice Rosa, Chet Jablonski, Rick McMenimen, Adam Schroadter, Diane Hardy, Town Planner, and Laura Spector, the Town's legal counsel. Landowner Walter Cheney was present. Also in attendance were David Contarino, Judith Bouthot, Lynne Badger, Russ Simon and Jim Fitzpatrick of the Moody Point Community Association (MPCA). The record should reflect that Planning Board member John Badger was present as an interested party. However, he recused himself from participating in the discussions as a Planning Board member.

The Board met at the stop sign on Cushing Road and approached Lot 13 and Lot 13 A from the southwest entering the property from Lot 36-6, which is land owned by the Moody Point Community Association Inc. The group following a trail and crossed an intermittent stream which flows into Lubberland Creek.

Mr. Cheney conducted a tour of the proposed lot: Lot 13A. The Board walked along the shoreline buffer behind the several single family homes which were built in the late 1990's. Several large trees were cut; areas were cleared; and turned into lawns and extensions of the outdoor living space. Walter Cheney pointed out an area of about 400 square feet, adjacent to the land of Contarino, that had been altered with piles of fill materials, and disturbed unstablized soil and tree stumps, which Mr. Cheney indicated appeared to be a wetlands violation. He indicated that the NH Department of Environmental Services (DES) had been to the site about the cutting and wetlands, but they have not taken any action on the matter. He stated that the landowners usually ask for permission to cut trees and some of the owners have done so and the cutting has been done in a controlled fashion. Others have not asked for permission and have gone ahead and cut many trees, some which are over 10 inches (DBH) and project into the tidal zone.

Mr. Cheney stated that this area was considered to be very sensitive from environmental standpoint. He showed the Board members areas where trees had been cut by the abutters who he stated had trespassed and destroyed the property. He stated that there were two cuttings of trees on property there, the most recent of which he became aware of in 2008. He is currently pursuing legal action against two (2) of the property owners, one who cut over 200 saplings and trees. He said that he had offered a settlement packages to those property owners for the damage that had been done and would be making that payment as a donation to a camp for terminally ill children. He spoke of the high costs associated with managing and policing Lot 13.

He stated he had approached the homeowners at the Lubberland Creek Association about the possibility of gifting the property to the owners, with deed restrictions that he retains the ability to sell view rights, and reserve the right to put up a fence and no-trespassing signs in the first five (5) foot easement. He feels that since the homeowners have trespassed and cut views and destroyed the wetlands, it now would be best to allow view easements and let the State and Town control the cutting as allowed by town and state law. He stated that The Nature Conservancy didn't have a problem with the view rights be granted on lot 13A. The Chairman asked for documentation on that point and Mr. Cheney said he would provide it.

Mr. Cheney claimed that when the lots on Lubberland Creek were sold, they were not sold as lots with views. They were offered and sold at a rate lower than other lots in Moody Point that had direct views of Great Bay. He said he had a letter from an appraiser who indicated that a view of Lubberland Creek would add \$50,000 to \$75,000 in value to the house lots in that area. Some of the homeowners have expressed interest in purchasing the view rights from him and he is

willing to offer them at a reasonable rate with financing, included.

A couple of Board members questioned why the focus of the site walk was on the tree cutting and the encroachment. It was suggested that that was a private civil matter between Mr. Cheney and the abutters. He explained that he wanted the Planning Board to understand why The Nature Conservancy did not want the entire Lot 13, just the portion that has been untouched.

Abutter David Contarino joined the group at 10:15 a.m. and wanted the record to reflect that not all the information that was presented by Mr. Cheney was entirely accurate. He stated the amount Mr. Cheney was asking for the view easements was excessive. One of the abutters raised the point that The Nature Conservancy would own property along the Lubberland Creek and would not allow any tree cutting within their 20 foot buffer. Over time the buffer would grow back and conceal the views. Why would the owners want to buy the view rights, if that is the case?

It was also suggested by the Moody Point Community Association (MPCA) members who were present that their organization could act as the stewards of lot 13-A if Mr. Cheney was inclined to turn the property over to them. They have an active environmental committee with a proven track record to maintain conservation lands and this parcel would provide connectivity between the parcels of open space within Moody Point. Mr. Simon then showed the Planning Board the adjacent land (lots 4 and 5), which were under the auspices of the MPCA. The site walk ended at 11:00 a.m.